IN THE

Supreme Court of the United States.

October Term, 1925. No. 38.

HARRY B. STILZ,
Appellant,
v.
THE UNITED STATES.

Appeal from the Court of Claims.

PETITION FOR A REHEARING AND MOTION TO REMAND TO COURT OF CLAIMS FOR A FURTHER FINDING OF FACT.

To the Honorable the Chief Justice and Associated Justices of the Supreme Court of the United States:

Your petitioner, Harry B. Stilz, respectfully represents that:

1. He brought this action, under the Act of Congress approved July 1, 1918, c. 114, 40 Stat. 705 to recover compensation for the use and manufacture by or for the Navy Department, of certain oil burners alleged to infringe Patents 945873 and 1066161. The Court of Claims adjudged that he was not entitled to recover.

2. On November 16, 1925, this Court held that as no infringement was found, the facts are not sufficient to constitute a cause of action and affirmed the judgment of the Court of Claims.

3. This action was prosecuted *in forma pauperis*, but appellant was not provided with the means for taking testimony of witnesses favorable to him.

4. Under the Acts of Congress approved July 20, 1892, (c. 209, 27 Stat. 252) and June 25, 1910 (c. 435, 36 Stat. 866), the means is provided for according full justice to any citizen of the United States, no matter how poor he may be, if he is entitled to a trial in a Federal Court.

5. This action went to trial upon the testimony of witnesses, all of whom were employed by the United States; the judgment of the Court of Claims was founded upon *ex parte* testimony.

6. The only expert opinion in evidence, which was favorable to appellant—the opinion of the Examiners-in-Chief of the United States Patent Office, on the strength of which the very broad claims, which appear in Patent 1066161, were allowed—was discarded by the trial Court.

7. The appellee has never argued that the patent claims in suit do not read upon and literally cover the alleged infringing oil burners in suit.

8. The Court of Claims did not hold that the patent claims in suit should not have been allowed; it held that "the plaintiff's claims to invention may not under the law be accorded a wider scope than the bringing into existence of . . . this identic device as improved."

9. As appears in Exhibit B-1, the Patent Office Examiner of the application for Patent 1066161 refused to allow any of the claims submitted; he held that the applicant had not invented anything beyond the identic device which is illustrated in said patent.

The Examiners-in-Chief of the United States Patent Office held that the applicant had discovered a new principle in the art of burning fuel and that he was entitled under the law to his very broad claims to invention, as they appear in said patent.

10. The Court of Claims held that, in comparing the oil burner which is illustrated in Patent 1066161 with other oil burners in which the oil is atomized principally by mechanical means, "the fundamental principles of differentiation are obvious and elementary."

11. The plaintiff was enabled to place in evidence but a very small part of the available facts which are competent to prove his claim. The trial Court did not have an opportunity to see through the show of things, as it was presented by the defendant's witnesses, into the thing itself, as it might have been revealed had the plaintiff possessed means for taking a full line of testimony.

WHEREFORE your petitioner prays for a rehearing of this action and he moves to remand the same to the Court of Claims for a further finding of fact.

HARRY B. STILZ,
Petitioner.